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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JAMES L. DAVIS, aka,
11 MICHAEL L. HOLMES,

12 Plaintiff,

No. CIV S-04-1390 LKK EFB P

13 vs.

14 TERESA A. SCHWARTZ, et al.,

15 Defendants.

ORDER

16 _____/
17 Plaintiff is a prisoner, without counsel, seeking relief for alleged civil rights violations.
18 See 42 U.S.C. § 1983. Defendant has filed a motion to be relieved of the obligation to file a
19 pretrial statement until after this court resolves defendant's pending motion for summary
20 judgment. In the July 28, 2006, schedule, this court directed plaintiff to file a pretrial statement
21 no later than March 23, 2007, and directed defendant to file a pretrial statement no later than
22 April 6, 2007. Pretrial conference is set for April 13, 2007. Therefore, the court construes
23 defendant's motion as one to modify the schedule.

24 A schedule may be modified upon a showing of good cause. Fed. R. Civ. P. 16(b). Good
25 cause exists when the moving party demonstrates he or she cannot meet the deadline despite
26 exercising due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.

1 1992). Defendant filed a motion for summary judgment on January 16, 2007, and plaintiff filed
2 an opposition on January 29, 2007. Thus, the matter is submitted for decision. Because the
3 resolution of that motion may eliminate some or all of the issues or otherwise alter counsel's
4 preparation of the final pretrial statement, good cause exists for granting the requested extension
5 of time.

6 Accordingly, defendant's March 22, 2007, request is granted, and the court vacates the
7 dates for defendant to file a pretrial statement and for pretrial conference. The court will set a
8 new pretrial schedule, if appropriate, after resolving defendant's motion for summary judgment.

9 So ordered.

10 Dated: March 30, 2007.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE